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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

JESSE PAUL MATNEY,

Defendant and Appellant.

A140366

(Humboldt County
Super. Ct. Nos. CR1005535A,
CR1202880, CR1303025)

This appeal challenges the imposition of two fines, alleging first that one fine under Penal Code¹ section 1202.44 was imposed in an unauthorized amount, and second, that a “parole revocation restitution fine” was improperly imposed under section 1202.45 because Matney is expected ultimately to be released on postrelease community supervision, not on parole.

We conclude the defendant has not borne his burden of showing there was any error in connection with the section 1202.44 fine and decline to modify the amount of the fine reflected on the abstract, which is the minimum amount prescribed by law. With respect to the second fine, we conclude the court properly imposed a “postrelease community supervision revocation restitution fine” under section 1202.45, subdivision (b), and the abstract requires no correction. We affirm the judgment.

¹ Undesignated statutory references are to the Penal Code.

I. BACKGROUND

On October 26, 2010, defendant Jesse Paul Matney pled guilty to one count of grand theft (§ 487, subd. (a)) in Case No. CR1005535A. On November 23, 2010, the court suspended imposition of sentence and granted Matney three years' formal probation. In addition, the court imposed a restitution fine of \$200 (§ 1202.4, subd. (b)) and imposed but stayed a probation revocation restitution fine of \$200 (§ 1202.44).

On July 16, 2012, Matney pled guilty to spousal battery (§ 273.5, subd. (a)) and admitted a prior domestic violence conviction (§ 273.5, subd. (e)(2)) in case No. CR1202880. On August 7, 2012, the court suspended imposition of sentence and granted Matney four years' formal probation. In connection with that sentence, the court imposed a restitution fine of \$240 (§ 1202.4, subd. (b)) and imposed but stayed a probation revocation restitution fine of \$240 (§ 1202.44).

On August 27, 2013, Matney pled guilty to assault by means likely to produce great bodily injury (§ 245, subd. (a)(4)) in case No. CR1303025 and admitted violations of probation in the two prior cases. Probation was revoked in those two cases.

On November 8, 2013, the court denied probation in all three matters and sentenced Matney to an aggregate term of five years, eight months in state prison. The court further imposed a \$280 restitution fine for the current offense under section 1202.4, subdivision (b), ordered the earlier probation revocation restitution fines into effect, and imposed postrelease community supervision revocation fines of \$200 (for the 2010 conviction), \$240 (for the 2012 conviction) and \$280 (for the 2013 conviction) pursuant to section 1202.45, with the latter three fines suspended unless postrelease community supervision were to be revoked.

Matney filed timely notices of appeal in all three cases. Because he raises only sentencing issues, the facts underlying the offenses are not relevant and are omitted from this opinion.

II. DISCUSSION

A. Probation revocation restitution fine in CR1202880

According to the reporter's transcript, at the time of the original sentencing in case No. CR1202880 on August 7, 2012, the court orally imposed a restitution fine of \$220 pursuant to section 1202.4, subdivision (b), and imposed but suspended a probation revocation fine under section 1202.44 of \$240: "Pursuant to 1202.4(b), you are ordered to pay a restitution fine to the State Restitution Fund and that will be in the amount of \$220. [¶] Under 1202.44, another \$240 is being imposed but is suspended and remain[s] suspended unless probation is revoked in the future."² On the other hand, the clerk's minutes show both fines were in the amount of \$240.

On November 8, 2013, the court lifted the stay on the fines previously imposed under section 1202.44, and ordered them payable, stating in part: "In CR1202880, the previously suspended probation revocation fine of \$240 in that case is now ordered into effect under 1202.44." Matney claims this was error because the 2012 reporter's transcript shows the correct amount of the fine should have been \$220.

Matney contends the disparity reflected in the 2012 reporter's transcript reveals a violation of section 1202.44, which requires that the probation revocation fine be "in the same amount as" the restitution fine imposed under section 1202.4, subdivision (b).³

² Matney neither objected to the \$240 probation revocation restitution fine when it was initially imposed in 2012, nor timely appealed the court's order. Although normally these omissions would bar raising the issue now, "[c]laims involving unauthorized sentences or sentences entered in excess of jurisdiction can be raised at any time." (*People v. Andrade* (2002) 100 Cal.App.4th 351, 354.) Accordingly, the Attorney General concedes that Matney's claim is properly before us.

³ Section 1202.44 states in pertinent part: "[T]he court shall, at the time of imposing the restitution fine pursuant to subdivision (b) of Section 1202.4, assess an additional probation revocation restitution fine in the same amount as that imposed pursuant to subdivision (b) of Section 1202.4. This additional probation revocation restitution fine shall become effective upon the revocation of probation or of a conditional sentence, and shall not be waived or reduced by the court, absent compelling and extraordinary reasons stated on record."

Because the court imposed a \$220 restitution fine, Matney argues, the probation revocation fine must also be reduced to \$220. (§ 1202.44.)

“Perhaps the most fundamental rule of appellate law is that the judgment challenged on appeal is presumed correct, and it is the appellant’s burden to affirmatively demonstrate error.” (*Ruelas v. Superior Court* (2015) 235 Cal.App.4th 374, 383 quoting *People v. Sanghera* (2006) 139 Cal.App.4th 1567, 1573.) We conclude Matney has not borne his burden of demonstrating error, and agree with the Attorney General that neither fine should be reduced. We reject Matney’s contention because (1) the error appears more likely to have been a court reporter’s error than a judicial one, and (2) there is no statutory authority for imposing a restitution fine (or, by implication, a probation revocation restitution fine) in an amount less than \$240. Indeed, to rule in Matney’s favor would require us not only to sanction fines in an unauthorized amount, but to abandon a fundamental presumption that the trial court was “ ‘aware of and followed the applicable law.’ ” (*People v. Stowell* (2003) 31 Cal.4th 1107, 1114.)

As the Attorney General points out, the conflict in the record may be explained in several different ways: “the trial court either (1) imposed a \$240 restitution fine under section 1202.4(b) and the amount was mistranscribed by the court reporter as \$220; (2) intended to impose a \$240 fine under section 1202.4(b), but mistakenly stated ‘\$220’; or (3) erroneously—and unlawfully—imposed the two fines in different amounts.”

Matney argues the third possibility should be accepted as true, but even if the trial court had intended to impose a \$220 fine under section 1202.4, subdivision (b) and a \$240 fine under section 1202.44, we would not be authorized to reduce both fines to \$220. The fine under section 1202.4, subdivision (b) could not legally have been imposed in an amount lower than \$240.⁴ We could not “correct” the sentence by

⁴ Subdivision (b)(1) of section 1202.4, states, in pertinent part: “If the person is convicted of a felony, the fine shall not be less than two hundred forty dollars (\$240) starting on January 1, 2012” Matney’s offense, conviction and initial sentencing all occurred in 2012; thus, the minimum fine of \$240 applied.

modifying it to impose an unauthorized one. Thus, Matney cannot be granted the windfall relief he seeks, even if his interpretation of the record is correct.

For this reason alone we could presume the trial court imposed the legally required minimum fine of \$240 at the time of Matney’s sentencing in 2012—as reflected in the clerk’s transcript—and the reporter mistranscribed the amount. An examination of the surrounding circumstances leads to the same conclusion.

While “[t]he reporter’s transcript generally prevails when there is a conflict in the record” (*People v. Black* (2009) 176 Cal.App.4th 145, 155), this rule is not inflexible, as Matney concedes. On the contrary, “when, as in this case, the record is in conflict it will be harmonized if possible; but where this is not possible that part of the record will prevail, which, because of its origin and nature or otherwise, is entitled to greater credence [citation]. Therefore whether the recitals in the clerk’s minutes should prevail as against contrary statements in the reporter’s transcript must depend upon the circumstances of each particular case.” (*People v. Smith* (1983) 33 Cal.3d 596, 599; accord, *People v. Malabag* (1997) 51 Cal.App.4th 1419, 1422-1423 [“When a clerk’s transcript conflicts with a reporter’s transcript, the question of which of the two controls is determined by consideration of the circumstances of each case”]; *People v. Beltran* (2013) 56 Cal.4th 935, 945, fn. 7.)

In this instance we agree with the Attorney General it is more likely the clerk’s transcript accurately reflects the court’s true sentence. The court’s statement imposing “another \$240” under section 1202.44 strongly suggests it had already imposed a restitution fine in that same amount under section 1202.4, subdivision (b). Indeed, Matney effectively concedes this point, noting that the trial court’s statements “could inferentially imply” the first fine was also \$240.

In sum, our reading of the record discloses the trial court imposed the restitution fine in the amount of \$240. As the fines under sections 1202.4, subdivision (b) and 1202.44 must be “in the same amount”—and a fine lower than \$240 was unauthorized under section 1202.4, subdivision (b)(1)—both \$240 fines must be upheld.

**B. The “postrelease community supervision revocation restitution fines”
under section 1202.45**

Matney’s only other argument is that the “parole revocation restitution fines” imposed in all three cases in November 2013 were improperly imposed because, due to the nature of Matney’s crimes, Matney never will be released on parole, but rather will eventually be released on postrelease community supervision under the Criminal Justice Realignment Act of 2011 (Realignment Act).⁵ The Attorney General does not contest Matney’s statement that he is eligible for postrelease community supervision rather than parole.

Notably, however, Matney does not argue that the fines imposed were completely unauthorized or that the amounts were incorrect. Instead, he asks us to “strik[e] the parole revocation fines under section 1202.45 and impos[e] [them] under section 1202.45[, subdivision] (b).” We conclude the court properly imposed the fines under section 1202.45, subdivision (b), and no correction on appeal is necessary. The detail about which Matney complains reflects a problem with the Judicial Council form and not with the court’s action.

When the court imposed and suspended the three revocation restitution fines it stated as follows: “In all three matters, pursuant to Penal Code section 1202.45, the Court is imposing an additional, identical restitution fine. In the new felony, it’s [\$]280. In the felony ending 880, it’s [\$]240. And in the felony ending 535A is [*sic*] [\$]200. Payment of those fines are [*sic*] suspended and remain suspended unless defendant’s parole *or post release supervision* is revoked in the future.” (Italics added.) At the conclusion of sentencing, the court advised Matney that, “[p]ursuant to Penal Code section 3000,” he would “be on parole *or some type of post release community supervision* for three years following release from prison.” (Italics added.) Thus, it

⁵ On April 4, 2011, the Governor approved the “2011 Realignment Legislation addressing public safety.” (Stats. 2011, ch. 15, § 1.)

cannot legitimately be argued that the sentencing judge was unaware of the Realignment Act.

Based on the reporter's transcript, we conclude the judge did not apply an outdated version of the statute in imposing the fine, as Matney suggests. Prior to January 1, 2013, section 1202.45 provided only for a "parole revocation restitution fine."⁶ (Stats. 2007, ch. 302, § 15, p. 3079; Stats. 1995, ch. 313, § 6, p. 1758.) It was amended in mid-2012 to add subdivision (b), which takes account of the provisions of the Realignment Act. (Stats. 2012, ch. 762, § 1 [SB 1210].)

As amended, section 1202.45, subdivision (b), now provides: "In every case where a person is convicted of a crime and is subject to either postrelease community supervision under Section 3451 or mandatory supervision under subparagraph (B) of paragraph (5) of subdivision (h) of Section 1170, the court shall, at the time of imposing the restitution fine pursuant to subdivision (b) of Section 1202.4, assess an additional postrelease community supervision revocation restitution fine or mandatory supervision revocation restitution fine in the same amount as that imposed pursuant to subdivision (b) of Section 1202.4, that may be collected by the agency designated pursuant to subdivision (b) of Section 2085.5 by the board of supervisors of the county in which the prisoner is incarcerated."

The amendment was passed by the Legislature on August 23, 2012, signed by the Governor September 29, 2012, and became effective January 1, 2013. Under the revised language, Matney was subject to a "postrelease community supervision revocation restitution fine" in an amount equal to the fine imposed under section 1202.4, subdivision (b). (§ 1202.45, subd. (b).)

⁶ Prior to 2012, section 1202.45 contained no subdivisions and read as follows: "In every case where a person is convicted of a crime and whose sentence includes a period of parole, the court shall at the time of imposing the restitution fine pursuant to subdivision (b) of Section 1202.4, assess an additional parole revocation restitution fine in the same amount as that imposed pursuant to subdivision (b) of Section 1202.4." (Stats. 2007, ch. 302, § 15, p. 3079; Stats. 1995, ch. 313, § 6, p. 1758.) This language now appears as subdivision (a) of section 1202.45.

The Attorney General acknowledges, as do we, that *People v. Isaac* (2014) 224 Cal.App.4th 143, 145–146 held a defendant facing postrelease community supervision instead of parole, who was sentenced in June 2012, was “not subject to a parole revocation restitution fine.” (Accord, *People v. Cruz* (2012) 207 Cal.App.4th 664, 672, fn. 6.) An important distinction between our case and *Isaac*, however, is that Matney committed his most recent offense in 2013 and was sentenced in 2013. The defendant in *Isaac* was sentenced prior to the amendment that authorized a like fine for defendants sentenced under the Realignment Act.

We conclude from the reporter’s transcript the judge properly imposed the fines under subdivision (b). Although the judge did not specify which subdivision of section 1202.45 she was applying, there was no necessity that the subdivision be specified. As noted above, we presume the trial court was aware of and followed the applicable law. (*People v. Stowell, supra*, 31 Cal.4th at p. 1114.)

Matney points to the abstract of judgment as proof that the revocation restitution fine was imposed under the pre-2013 version of the statute because the second page of the abstract states the fines were imposed “per PC 1202.45 [and] suspended *unless parole is revoked*.” (Italics added.) Because the italicized language does not include the phrase, “unless postrelease community supervision is revoked,” Matney implies this proves the judge improperly imposed the fine under the pre-2013 version of the statute. This error, he claims, must be rectified on appeal.

We disagree. “The abstract of judgment is not the judgment of conviction. By its very nature, definition and terms . . . it cannot add to or modify the judgment which it purports to digest or summarize.” (*People v. Hartsell* (1973) 34 Cal.App.3d 8, 14.) Rather, “ ‘[r]endition of judgment is an oral pronouncement.’ ” (*People v. Mesa* (1975) 14 Cal.3d 466, 471.) Therefore, we consider the reporter’s transcript controlling as to the legality of the fine imposed. And as we read the reporter’s transcript, the sentencing judge knew what she was doing and imposed the fine under subdivision (b) of section 1202.45.

The language of the abstract questioned by Matney is part of standard Judicial Council Form CR-290, revised July 1, 2012. The July 2012 revision was designed to accommodate the changes made by the Realignment Act. (See Judicial Council’s Invitation to Comment on abstract of judgment form CR-290, W12-05 <<http://www.courts.ca.gov/documents/W12-05.pdf>> [as of April 16, 2015].) Naturally, however, the July 2012 version of the form did not incorporate the later-adopted language specific to defendants subject to postrelease community supervision. According to our research, the standardized form has not been updated since the July 2012 revision. The contents of the abstract of judgment form are prescribed by the Judicial Council (§ 1213.5), and the language reflected on the form was the Judicial Council’s, not the sentencing judge’s. Use of the standardized abstract did not transform the judge’s lawful imposition of the statutorily authorized fine into an unauthorized sentence.

If we were to grant relief to Matney on the basis that the Judicial Council’s form abstract of judgment does not include reference to “postrelease community supervision,” then we would seemingly be obliged to grant relief in all prison commitments subject to the Realignment Act in which the July 2012 version of Judicial Council Form CR-290 was used. Even if the standard form is due for an update, we see no need to provide an appellate remedy in individual cases at the defendant’s request.

Indeed, even assuming the abstract were to be treated as controlling and were to be enforced literally, we fail to see how Matney could be prejudiced by the language employed. If the fine were to remain suspended “unless parole is revoked”—and if Matney will never be placed on parole—then arguably the suspension of the fine should not be lifted even if Matney’s postrelease community supervision were to be revoked. While this may give Matney a potential defense against collection of the fine in the future—and may present an impediment to the government in collecting those postrelease community supervision revocation restitution fines—it does not seem to threaten Matney with a fine unauthorized by law, an excessive fine, or any other prejudicial impact. No correction of the abstract is required.

III. DISPOSITION

The judgment is affirmed.

Streeter, J.

We concur:

Ruvolo, P.J.

Reardon, J.